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CHARLES ELMORE

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1929

No. 344

CHARLES A. CORLISS,
Petitioner,

vs.

FRANK K. BOWERS, as Collector of Internal Revenue for the Second District of New York,
Respondent.

BRIEF OF AMICI CURIAE.

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Amici Curiae

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INTRODUCTORY STATEMENT.

Counsel appearing herein as *amici curiae* submit this brief in the belief that one of the most significant issues in the case has not been considered by the District Court or by the Circuit Court of Appeals. We respectfully direct the attention of this court to the

effect upon *charitable trusts* of the decision of the lower court and of the statute therein considered.

In 1920, Mrs. Elise A. Drexler conveyed property in trust to certain trustees, whose duties were to manage the property, collect the income, pay therefrom the expenses of the property, and distribute the balance of the income *exclusively for charitable purposes.* Mrs. Drexler, by the terms of the trust instrument reserved to herself the power to revoke the trust at any time during her life, by an instrument in writing signed by her and recorded in the office of the County Recorder of the City and County of San Francisco. She has never exercised the power of revocation and has never received any part of the income of the trust; all of the income, after deducting the expenses of the property, has been paid out wholly for charitable purposes. Nevertheless, in 1924 and in subsequent years, taxes on the income of the trust were levied against Mrs. Drexler. Upon the approval of this tax by the Commissioner of Internal Revenue, an appeal was taken by Mrs. Drexler to the Board of Tax Appeals, and that appeal is now awaiting a hearing.

The Treasury Department has construed sections 219g and 219h of the Revenue Act as applying to any revocable trust, private or charitable. If this construction be sound, then the reasonableness of the statute cannot be determined without considering its effect upon charitable as well as upon private trusts. We are also apprehensive, in the event that this court

uphold the statute in the instant case, that the decision may preclude further inquiry, particularly into its application to charitable trusts. To guard against such an eventuality, we respectfully urge this court to consider, as part of this case, whether a trust for charity, such as the Drexler trust, comes within the intended purview of the statute; and if it does, whether the statute when applied to such a trust, is valid. If it be decided that when applied to charitable trusts the statute is invalid, does this invalidity vitiate the statute in all cases?

It is not our contention that all of these matters must necessarily be decided in the instant case; but they are, we believe, within the scope of the present inquiry, and should be considered therein, even though the ultimate decision be reserved. We have therefore dealt briefly with the application of the problem to the case of charitable trusts.

I.

IN A CHARITABLE TRUST, THE RESERVATION BY THE TRUSTOR OF THE POWER OF REVOCATION CANNOT RESULT IN EVASION OF INCOME TAX.

The theory of the government, as expressed in the briefs before the Circuit Court of Appeals, and in the opinion of that court, is that when a revocable trust is created, there is the possibility that the purpose thereof is simply to evade the higher surtaxes. The government admits that it is unreasonable to tax

a trustor who receives none of the income of the trust. The government contends, however, that in a situation where it is likely or *possible* from a practical and reasonable point of view, that the income of the trust may be received by the trustor, he may be taxed, and Congress, in order to effectuate its object—to prevent evasion of surtaxes—may penalize the trustor of a *bona fide* revocable trust. In other words, the government takes the position that every trustor of a revocable trust is conclusively presumed to be guilty of an evasion. Why? Because in some cases there might be a suspicion of evasion.

The justice and reasonableness of this position are at least open to grave doubt, and we are in hearty accord with the views of petitioner in the court below. But that very position involves an important admission, which is particularly significant in considering the case of a trust for charity. The admission is that *where there is no likelihood or possibility of evasion,* a tax levied on the trustor is unconstitutional. This is undeniably true in virtue of the government's major premise: the absence of such likelihood or possibility renders the tax arbitrary and capricious.

A. In a charitable trust there is no likelihood or possibility that the trustor may receive any of the income of the trust.

The government justifies the tax upon the trustor of a revocable trust upon the theory that by the device of a revocable trust for the benefit of the trustor's immediate family or friends, it is possible and reasonably probable that a taxpayer will receive income free from the higher surtaxes. It is essential to the sup-

port of this theory that there be *income to some person through whom it may conceivably find its way back to the trustor*. In the case of a trust for charity, this essential element cannot exist.

A charitable trust cannot be used by the trustor to evade taxes. Neither the trustor, nor a member of his family, nor a trusted friend receives or can receive any of the income; it is wholly paid out for charitable uses. It is beyond all reason to suppose that a charitable trust could be used in the same manner as a private trust—as a device by which the income might find its way back to the trustor without his paying the taxes. The nature of charities, the purposes for which their funds are used, the obligations assumed by the trustees, the close scrutiny by the courts, and the power of the attorney-general to enforce the trust on behalf of the beneficiaries as to accrued income, despite the power of revocation, make this contingency so remote and improbable, if not impossible, as to afford no ground for the suspicion upon which the government justifies the tax.

Moreover, Congress has declared that trusts for charity are never to be judged by fixed rules of conclusive presumption, or convicted upon suspicion. Whether the trustor of a revocable trust for charity receives any income from the trust is made a question of fact by the very terms of the Revenue Act. Section 103, subdivision 6, of the Act of 1928, exempts from income tax

> "corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or edu-

cational purposes, or for the prevention of cruelty to children or animals, *no part of the net earnings of which inures to the benefit of any private shareholder or individual;*" (Italics ours.)

It is evident that Congress has declared, in effect, that if *as a fact,* "no part of the net earnings" of the trust "inures to the benefit of any private * * * individual", then the income is exempt.

If the government grant exemption to a beneficiary of a trust for charity, revocable or irrevocable, it follows that *no private person* can or does receive any of the income. In classifying a trust as charitable, and granting to the beneficiary the resulting exemption, it is necessarily determined *as a fact* that "no part of the net earnings" of the trust "inures to the benefit of any private * * * individual". There is no warrant for reading into the statute the exception that in the case of a revocable trust, the income from which would otherwise be exempt, it shall be conclusively presumed, in spite of the fact, that *some* part of the income inures to the benefit of a private individual. The trust is either charitable or taxable. The government cannot justify its tax to the trustor upon a suspicion which is dissolved by its own findings of fact. It cannot blow hot and cold.

B. To take advantage of an exemption expressly granted by the statute is not an evasion of tax.

If the above position be sound, and it be true that the trustor cannot profit from the trust, then the only conceivable evasion occurs when the charitable trust *is created.* The trustor has disposed of his capi-

tal in such a manner as to render all the income thereof immune from tax; he may be said, then, to be "evading" the tax! Of course, this argument applies with equal force to *irrevocable trusts,* for if this be evasion, certainly *permanent "evasion"* is no less reprehensible than *temporary or contingent "evasion".* But the answer is the same in either case: *exemption is not evasion.* One should be able to avail one's self of an expressly granted exemption from tax without being subjected to a special penalty. The same statute cannot be construed so as to give and to take away. If this were not so, then every employment of capital which operates to decrease the taxable income of the owner, would be an evasion. By this process of reasoning, even the investment of funds in tax exempt securities constitutes an evasion. The courts have not taken that position. They have recognized that there is no impropriety in an actual and bona fide disposition of property even though its purpose is that of "cutting down the total family income tax contribution to the government". (*Bing v. Bowers,* 22 Fed. (2d) 450, 452.) Even "a device to avoid the burden of revenue acts may be resorted to, if effectuated by legal means". (*Fraser v. Nauts,* 8 Fed. (2d) 106, 107.)

A mere avoidance of tax is not an evasion.

Holmes, Federal Taxes (6th Ed. 1925) p. 115;
Weeks v. Sibley, 269 Fed. 155, 158.

In the last-named case the court said:

"Bearing in mind the rule of construction which the Supreme Court announced in the case

> of Gould v. Gould, 245 U. S. 151, 38 Sup. Ct. 53, 62 L. Ed. 211, and numerous other cases, to the effect that the provisions of the taxing statutes are not to be extended by implication beyond the clear import of the language used, and that they are to be construed most strongly against the government and in favor of the taxpayer, it is the opinion of this court that the right to change the status of an organization, or to dissolve an organization in any legal manner, is not made ineffectual because the motive impelling the change is to reduce or avoid taxation in the future. The right so to do is an incidental right, inseparably connected with an individual's right to own and control his property. It is practically identical with the sale by a citizen of tax-burdened securities and the investment of the proceeds thereof in tax-exempt ones, for the purpose of reducing or avoiding taxation.
>
> "It is not unnatural that any thoughtful business man take such steps. It is altogether different from tax dodging, the hiding of taxable property, or the doing of some unlawful or illegal thing in order to avoid taxation."

If an avoidance of tax for one's private benefit is proper when accomplished by legal means, certainly the same must be said of the use of a statutory exemption for the benefit of objects of charity. It is, of course, unnecessary to point out that Congress, by the exemption provisions in the Revenue Act, has cordially welcomed the creation of charitable trusts.

See

Slocum v. Bowers, 15 Fed. (2d) 400, 403.

To summarize this argument, the creation of a revocable trust for charity cannot possibly constitute

an evasion of surtaxes, for the reason that the income from such a trust is exempt from taxation. It cannot be seriously contended that when Congress provides for specific exemptions from tax on grounds of public policy, it is an evasion of the law to take advantage of the exemptions. Such a contention would carry with it the corollary that every use to which money is put, no matter how legitimate, is an evasion if ultimately it brings in less money to the government. That Congress intended no such result is plain; and it is equally plain that even if such had been its purpose, the attainment of it was quite beyond its powers.

II.

INCOME WHICH IS EXEMPT FROM TAX BY THE TERMS OF THE STATUTE CANNOT BE TAXED UNDER THE PROVISIONS OF ANOTHER PART OF THE SAME STATUTE.

In *Eisner v. Macomber*, 252 U. S. 189, 64 L. Ed. 521, this court squarely held that in order to justify an income tax there must be actual income derived from the property and received by the taxpayer. The government, and the court below in the instant case, construe *Eisner v. Macomber* as holding merely that there must be income; and it is argued that the decision in that case places no obstacle in the way of taxing one who does not receive the income, if income is actually received by someone. To us this appears to be a grave misconception, both of the language and the logic of the decision. If it be arbitrary and unjustifiable to tax one who does not receive income

when there is no income to anyone, then it is equally arbitrary and unjustifiable to tax one who likewise does not receive any income, merely because income is received by another. It follows that if one cannot be taxed because there is no income, he cannot be taxed though there be income, *if he does not receive it.*

Granting, however, that the holding of *Eisner v. Macomber* may warrant the government's interpretation; *does it also follow that the principle may be extended to justify a tax upon one who does not receive income, even when the income itself is exempt from taxation?*

The answer is revealed by contrasting the private trust with the charitable trust. The income of a private trust, *revocable or irrevocable,* is taxable, *and is always taxed.* When the government taxes the trustor of a revocable trust instead of the beneficiary, it seeks merely to obtain the highest surtax by lumping together the trustor's income and the income of the trust. Let us assume that it is justified in so doing in order to make the revocable *private* trust unprofitable as a device for evasion. But the income of a charitable trust as such, *revocable or irrevocable,* is not taxable. Hence, when the government undertakes to tax the trustor of a revocable trust for charity, its action cannot be justified on the ground that it is seeking to collect a tax that it might lose by an evasion. It is simply *penalizing the reservation of the power of revocation.* There is a serious doubt whether Congress has the power to go so far as to penalize this perfectly legitimate and highly necessary power even in pur-

suance of the legitimate object of preventing evasion. But certainly it cannot be contended that Congress has this power *in the absence of such an object;* "* * * under the mere guise of reaching something within its powers Congress may not lay a charge upon what is beyond them." (*Nichols v. Coolidge,* 274 U. S. 531, 71 L. Ed. 1184, 52 A. L. R. 1081).

III.

THE PRACTICAL RESULT OF A TAX ON THE TRUSTOR OF A REVOCABLE TRUST FOR CHARITY IS SUCH AS TO RENDER THE TAX UNREASONABLE, ARBITRARY AND CAPRICIOUS.

In *Nichols v. Coolidge,* supra, at page 541, this court said:

> "Taxes are very real things and statutes imposing them are estimated by practical results."

Indeed, the government insists upon a practical approach to the problem involved in the instant case. Its position is characterized by a refusal to recognize that the trustor of a revocable trust, unless and until the power of revocation be exercised, has, in *legal* effect, no more right to the income than has the trustor of an irrevocable trust. In *Eisner v. Macomber,* supra, at 252 U. S. 214, this court declared that it could not

> "ignore the substantial difference between corporation and stockholder; treat the entire organization as unreal; look upon stockholders as partners, when they are not such; treat them as having in equity a right to a partition of the corporate assets, when they have none; and indulge the fiction that they have received and realized a share of the

profits of the company which in truth they have neither received nor realized * * *".

The government's position in regard to the statute in question ignores differences fully as substantial as those above mentioned, and indulges in a similar fiction. Upon what does the government justify this disregard of basic principles of the law of trusts, and this wide departure from the accepted definition of income? Assuming a lack of conscience in taxpayers generally, it speculates upon what may happen if the tax be not levied upon the trustor. This speculative possibility constitutes the sole justification for a tax which, on its face, is arbitrary and unreasonable.

The other side of the picture is fully as interesting, and, it is submitted, equally material. If speculation as to the probable results in the absence of the statute will help *to sustain* a statute apparently invalid, may not speculation as to the probable results of its enforcement *serve to emphasize the invalidity of that same apparently invalid statute?* What would be the practical result of the imposition of a tax on the trustor of a revocable trust for charity, based upon the income of the trust?

A. Charitable trusts may be discouraged.

Few persons are willing to set aside a large amount of capital, receive nothing from it, and then, in addition, pay a tax on the income from that capital. Compulsory annual tribute to the government as a penalty for having made, at some past date, a gift in trust to charity is a practical deterrent of considerable force.

Of course, a trustor could decrease the amount of the trust estate, reserving enough capital to himself to pay the income tax on the trust (after paying a tax on the income of that same reserved capital). But whichever course is taken—the elimination of the trust or the decrease in its capital endowment—the result would be deplorable. The law has heretofore shown a distinctly hospitable attitude toward charitable trusts, and the Revenue Act expresses this policy in its exemption provisions. As the court says in *Slocum v. Bowers*, 15 Fed. (2d) 400, 403:

> "The policy of exempting these corporations is firmly established and has been continuously expanding ever since the system of income taxation was adopted."

If the sections in question be held to apply to charitable trusts, then this policy is reversed, for the tax, while acting upon the trustor, strikes at the trust itself.

B. The trustor may be forced to give up the power of revocation.

Congress has undertaken to force a trustor to pay an annual tax out of his other resources, if he has any, merely by reason of his having reserved the power of revocation. The imposition of this tax, if it does not prevent a trustor from establishing the trust in the first instance, or lead him to destroy an existing trust, may force him to relinquish his power of revocation. Perhaps this is the object of the statute: to abolish powers of revocation and to make all trusts irrevocable. This would be indeed a strange object for Congressional legislation. We have already suggested

that there is some doubt whether Congress by the imposition of a penalty in the guise of a taxing statute, can deprive persons of the right to make a disposition of their property in trust in a manner sanctioned by the law of the state in which the trust is created. Congress does not and cannot ignore local law in the enactment of a tax statute.

United States v. Bolster, 26 Fed. (2d) 760.

But assuming that Congress may legislate on the subject, is the particular legislation reasonable? Is the power of revocation so idle or so dangerous that its elimination by the indirect method of prohibitive taxation, constitutes a reasonable object on the part of Congress?

The decisions furnish a ready answer to this question.

In *Jones v. Clifton,* 101 U. S. 225, 25 L. Ed. 908, 910, Mr. Justice Field said:

> "The powers of revocation and appointment to other uses reserved the husband in the deeds in question do not impair their validity or their efficiency in transferring the estate to the wife, to be held by her until such revocation or appointment be made. Indeed, *such reservations are usual in family settlements* and are intended 'To meet the ever-varying interests of family connections.' Riggs v. Murray, 2 Johns. Ch. 565." (Italics ours.)

In *Van Cott v. Prentice,* 104 N. Y. 45, 10 N. E. 257, 261, the court said:

> "We discover nothing in the provisions of the deed, properly construed, inconsistent with a completely constituted trust, wholly voluntary and

> benevolent, and subject to revocation by the settlor at any moment,—*a kind of trust of which the books furnish many instances,* and which, indeed, are sometimes subject to doubt and suspicion if the power of revocation is absent." (Italics ours.)

In *Sims v. Brown,* (Mo.) 158 S. W. 624, 627, a similar statement is made:

> "In fact, courts of equity have always looked with suspicion upon voluntary trusts or settlements which do not reserve a power of revocation. Garnsey v. Mundy, 24 N. J. Eq. 243; 1 Perry on Trusts and Trustees (6th Ed.) § 104, footnote 3, p. 130."

In *Nichols v. Emery,* 109 Cal. 323, 331, 41 Pac. 1089, 50 Am. St. Rep. 43, Henshaw, J., said:

> "Indeed, this power of revocation was strongly favored in the case of voluntary settlements at common law, and such a trust without such a reservation was open to suspicion of undue advantage taken of the settler. (Lewin on Trusts, *75, 76; Perry on Trusts, Sec. 104.)"

It was only after many years that the American courts broke away from the early English rule that the absence of a power of revocation in a voluntary settlement was *prima facie evidence of mistake or fraud;* and even in the later decisions may be found—cases wherein such settlements were *attacked as being invalid because they did not contain the power.* See, for example,

> *Crumlish v. Security Trust & Safe Deposit Co.,* 8 Del. Ch. 375, 68 Atl. 388;
>
> *Reidy v. Small,* 154 Pa. 505, 26 Atl. 602, 20 L. R. A. 362.

The power of revocation, reasonable and natural in the private trust, *may be a necessity in the charitable trust*. In the private trust, the trustor has in mind particular beneficiaries, a limited duration, and usually very specific objects. If the trustees are chosen with care, and their powers and duties clearly defined, it is conceivable that the proper functioning of the trust may be left to them, subject to the intervention of the courts at the instance of the beneficiaries, if there should ever be a departure from the strict terms of the trust instrument.

No such simplicity attends the operation of a charitable trust. Here the beneficiaries are not always specific. They are frequently indeterminate. The duration of the trust is often unlimited. In the course of years circumstances change; certain objects may have become satisfied; other charitable purposes may become appealing; or there may arise necessities which are more pressing and more worthy than those for which provision was originally made. Suppose no power of revocation was reserved; what is to be done? And suppose, above all, that it become necessary, as has often been the case, that a part or all of the principal be used in order that the very purpose of the charity be preserved. If no power of revocation be reserved the trustor would stand destitute of the means to re-create the trust in such manner that the capital would be available to effectuate the charitable purpose and there would ensue one consequence of that so greatly dreaded institution, "The Dead Hand in Philanthropy".

If no power of revocation has been reserved, the charitable trust is, like any private trust, irrevocable.

Mott v. Morris, (Mo.) 155 S. W. 434, 437.

This is so even though the trustees fail to comply with some of its conditions.

Sickles v. City of New Orleans, 80 Fed. 868, 874.

The trustor cannot, by agreement with the trustees, or with the persons who happen to be the beneficiaries at the particular time, secure a change in the object of the trust.

Parish of Christ Church v. Trustees, etc., (Conn.) 35 Atl. 552, 555.

The only recourse is to the *cy pres* power of the courts. But this is exercised only when the trust object fails utterly—never where it is merely desirable to change the object to meet new conditions. And this last resort—the *cy pres* power—is a mere *rule of presumed intention.* It is never employed to make the most worthy and intelligent public use of the property, but *solely to carry out the intentions of the trustor, as closely as possible.*

Jackson v. Phillips, 14 Allen (Mass.) 539, 580.

Why should a trustor be forced to pursue an immutable course in his donations to charity? Why should he be required to risk the entire endowment to the intelligence, integrity, and sympathetic administration of the trustees? His trustees may disappoint him

though his interest in the object of his bounty may remain as lively as it was when he created the trust.

The very instances of the exercise of the *cy pres* power illustrate the importance and necessity of maintaining a watchful eye over the administration of a trust. The trustor may, perhaps, rely upon the courts to save the trusts if its object fails completely, and no doubt the court can make a plausible guess as to what the trustor might desire as a substitute. But to keep the objects of the trust responsive to the greatest necessities of the day is a task which the trustor might, naturally, consider is a function to be performed exclusively by him. If he create an irrevocable trust, he casts aside this opportunity.

Reason and experience lead to the same conclusion: the reservation of a power of revocation in a charitable trust is neither idle nor dangerous, but useful and necessary, and its abolition would be an unreasonable and arbitrary exercise of the powers of Congress.

C. The trustor may shift the burden of the tax to the beneficiaries of the charity.

The third step which the trustor may take is to pass the tax along where it would normally fall—upon the recipient of the income. This could be accomplished by a provision in the trust instrument requiring that the trustor be reimbursed from the revenue of the trust for any taxes paid by him on the income of the trust.

No doubt this is the most likely course which would be pursued. Certainly it would be the reasonable one. Resourceful persons, desirous of furthering worthy charitable objects, might not be easily deterred by the inhospitable attitude of Congress. They might create and maintain the trusts, safeguard the endowment by reserving the power of revocation, and let the trust pay its own income tax. In so doing, they would be following precisely the advice of the government, for it was urged in support of the *reasonableness of the tax, that the trustor could shift the burden to the beneficiaries.* This also seems to be the suggestion of the Circuit Court of Appeals, for that court says:

> "By such a trust indenture, the grantor gives and the grantee receives with knowledge of who shall bear the burden of taxation."

The result would be that the beneficiaries would pay income tax under a statute which expressly exempts them from payment of the tax. They would do more: *they would pay, in addition, the amount necessary to make up the surtax "evaded" by the trustor when he divided "his" income into his income and the income of the trust!*

This, it must be emphasized, is the *practical result* of the statute; and it is to the *practical* situation that the government has directed attention.

An interesting question of interpretation is suggested here. If the natural result of one section of a statute is to impose a tax upon income expressly exempt from the tax by the terms of another section

of the same statute, should not the two sections be construed together, and should it not follow that the former section is limited by the latter? In other words, when *section 219g* speaks of "income" of the trust, should it not, in view of *section 103, subdivision 6*, be interpreted to read "taxable income"?

In *Bankers' Trust Co. v. Bowers,* 295 Fed. 89, 96, the court said:

> "In interpreting a statute, the construction placed thereon should avoid unjust consequences, unless the language compels such a result, and a construction should be had with reference both to the history of the legislation and to other sections of the law with which it is in pari materia."

Further, on page 97, it is said:

> "The interpretation of statutes levying taxes must not extend beyond their provisions by implication, nor must they be interpreted beyond the clear import of the language used. In case of doubt, they are interpreted strongly against the government and in favor of the taxpayer. * * * Where a construction of a statute will occasion great inconvenience, or produce inequality or injustice, that view is to be vetoed if another and more reasonable interpretation is present in the statute. * * *".

In *Slocum v. Bowers,* 15 Fed. (2d) 400, the court considered the various statutory changes relating to the taxation of estates and trusts, and declared (page 403):

> "It is quite clear that the primary purpose of the amendments taxing estates and trusts as en-

> tities was to reach income that had not theretofore been presently taxable at all. A design to tax income where the beneficial ownership is in corporations generally exempt under the law accordingly seems contrary to the history and spirit of the statute."

Summarizing its conclusions, the court continued:

> "In view of the wide general exemption of charitable corporations under section 231 (6), supra, of the Act of 1918, the careful provision to exempt a corporation holding title to property the income of which is to be turned over to exempt corporations, the 15 per cent. exemption in the case of distributions of income to charity *inter vivos* by private individuals, and the permitted deduction by a fiduciary in his return of any part of the gross income of an estate which is paid or permanently set aside for religious, charitable, scientific, or educational corporations, it is hard to believe that in the one case of administration of an estate the exemption should turn on the technical question of whether the corporations seeking it have the legal or equitable title to the income. The policy of exempting these corporations is firmly established and has been continuously expanding ever since the system of income taxation was adopted. The statute should be read, if possible, in such a way as to carry out this policy and not to make the result turn on accidental circumstances or legal technicalities."

If, however, this construction be abandoned, and it be held that the statute applies to charitable trusts, the invalidity seems plain.

We submit that whether the statute discourages the creation of charitable trusts, abolishes powers of revo-

cation, or places the burden of the taxes on the beneficiaries of such trusts, the result is unjust and unreasonable; and that a statute imposing such a tax without a legitimate object (there being no tax evasion possible in a charitable trust), contrary to the clearly defined policy of the law (which favors the creation and unhampered administration of charitable trusts), and in conflict with other express provisions of the same statute (which exempt the income of such trusts from all taxes), is "so arbitrary and capricious that its enforcement would amount to deprivation of property without due process of law within the inhibition of the 5th Amendment." (*Blodgett v. Holden*, 275 U. S. 142, 147, 72 L. Ed. 206.)

We respectfully submit that the petition for a writ of certiorari to the Circuit Court of Appeals should be granted.

Dated, San Francisco,
September 25, 1929.

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